IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8058 of 2001

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MEDICAL OFFICER & 1 - Petitioner(s)
Versus
GORDHANBHAI GOVABHAI PARMAR - Respondent(s)

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Appearance :
MS TRUSHA MEHTA for MS SEJAL K MANDAVIA for Petitioner(s) : 1 - 2.
MR AMAR D MITHANI for Respondent(s) : 1,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 18/10/2007

ORAL JUDGMENT

This petition under Articles 226 and 227 of the Constitution of India has been preferred by the District Ayurvedic Officer, Junagadh against the

judgment and award dated 11th January, 2001 passed by the Labour Court, Junagadh in Reference LCJ Demand No.16/1994.

The respondent-workman was employed by the Medical Officer, Ayurvedic Dispensary, Matiyana as part-time employee for cleaning the clinic and for filling the water. The workman continued to serve as such since 1974. In 1994, he raised industrial dispute and claimed regularisation in service as a Class-IV servant in the clinic. The said dispute came to be referred to the Labour Court, Junagadh and registered as above. The reference was contested by the petitioners. According to the petitioners, the workman was appointed as a part-time employee only for the purpose of cleaning the clinic for two hours in the morning; that there was no post of the kind in the sanctioned setup; and that the workman was paid wages out of contingency fund.

The Labour Court, by impugned judgment and award dated 11th January, 2001, held that the petitioners had failed to prove that there was no permanent post

of the kind in the sanctioned setup and that the nature of work the workman was performing was of permanent nature. The Labour Court, therefore, proceeded to hold that the workman was exploited. The petitioners had adopted unfair labour practice and that the workman was entitled to regularisation in service as a Peon as a regular employee on completion of 240 days' service. Feeling aggrieved, the petitioners have preferred the present petition.

Ms.Mehta has assailed the judgment of the Labour Court. She has submitted that the petitioners are the employees of the District Panchayat. The dispensary in question is run by the District Panchayat. Therefore, it cannot be said to be an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. She has submitted that the employment in the Panchayat service is governed by the statutory rules and regulations made in that behalf. Appointments have to be made in accordance with such rules. The service of a part-time employee cannot be made permanent by sheer passage of time. In support of her submissions, she has relied upon the

judgment of the Hon'ble Supreme Court in the matter of **Secretary, State of Karnataka and others v/s. Umadevi and others** [AIR 2006 SC 1806] and the judgment of the Full Bench of this Court in the matter of **Amreli Municipality v/s. Gujarat Pradesh Municipal Employees Union** [2004(3) GLR 1841].

The petition is contested by Mr.Mithani. He has relied upon the counter affidavit and the documents annexed to the said affidavit, certain judgments of the Civil Court and the further development that has taken place pending this petition.

It is apparent that the respondent-workman has brought further materials on record by counter-affidavit and the documents annexed to the counter-affidavit. Such further materials could not have been placed on record without the express permission of the Court. Be that as it may, these further materials also do not enhance the case of the workman.

Indisputably, the workman was engaged by the Medical Officer at local level as a part-time daily

rated employee for cleaning the clinic. Such part-time employees do not get a right to regularisation in service automatically, irrespective of the sanctioned setup, the eligibility and the procedure laid down under the statutory rules. It was not established: first, that the workman was engaged as a full time employee; second, that there was a sanctioned post of Peon in the clinic; third, that the workman was eligible for appointment as a Peon; fourth, that the medical officer was the appointing authority. The appointment of the workman was made at local level without giving opportunity to other eligible candidates to compete for such employment. In my view, therefore, the workman was not entitled to regularisation in service as has been directed by the Court below.

It transpires that pending this petition the service of the workman has been terminated by order dated 17th August, 2005. The said order is not the subject matter of challenge in the present petition.

For the aforesaid reasons, the petition is

allowed. The impugned judgment and award dated 11th January, 2001 passed by the Labour Court, Junagadh in Reference LCJ Demand No.16/1994 is quashed and set-aside. The claim made by the workman stands rejected. Rule is made absolute. The parties will bear their own cost.

(Ms. R.M.Doshit, J.)

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